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Kwasi Addo Asare

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BOCA RATON, FL 33487

EXAMINER

BROPHY, MATTHEW J

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/725,728	<b>Applicant(s)</b> ASARE ET AL.	
	<b>Examiner</b> MATTHEW J. BROPHY	<b>Art Unit</b> 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This office action is in response to the amended appeal brief filed October 9, 2008.

#### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-12 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

5. Claims 1-7 are rejected because they are interpreted to be directed to computer software *per se* because applicant's specification recites in part: " The present invention can be realized in hardware, software, or a combination of hardware and software" ¶42. The recited claim elements of these claims are interpreted to be direct to software in light of the specification.

6. Claims 8-12 are rejections because they are process claims that are neither (1) tied to another statutory class nor (2) transform underlying subject matter. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,681,391 Marino et al. in view of US PG Publication 2004/0078793 Bragull et al.

Regarding Claims 1 and 5, Marino teaches: a repository of semantic models **(230)** for interdependent ones of application components **(222) (Col. 13, Ln 19-35** **“Additional information may be received by the installation-affecting-relationship manager 220 from a Core Engine 224, e.g., a list of components 222 to be installed and the like. The installation-affecting-relationship manager 220 computes entries for an installation-relationship matrix 226 and initializes parameters 228 and in a data structure 230 as well as an Installation\_order list 232 (step 202).”);** a mapping of individual listings **(translation of 230 to 232, FIG.5 )** in said semantic models to target platform specific installation instructions **(“specific” taught by update of 232 based on user’s platform) (Col. 14, Ln 13-31 “The current state of the user’s machine is determined. If one or more components are incompatible with the components to be loaded, the offending components are removed in an orderly fashion so that components dependent on them are also removed. The procedure**

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**described for the mutually exclusive relationship can be used to implement this operation in accordance with the invention. This is followed by installation of the requested components, also in accordance with the invention, e.g., the method outlined in the flow chart in FIG. 4.”);**

and, a <script> generation engine configured to produce a target specific set of instructions **(232)** for a specified application component based upon a mapping of at least one of said semantic models in said repository **(translation of 230 to 232, FIG.5 )**. **(Col. 14, Ln 13-31 “The current state of the user's machine is determined. If one or more components are incompatible with the components to be loaded, the offending components are removed in an orderly fashion so that components dependent on them are also removed. The procedure described for the mutually exclusive relationship can be used to implement this operation in accordance with the invention. This is followed by installation of the requested components, also in accordance with the invention, e.g., the method outlined in the flow chart in FIG. 4.”)**

Marino does not explicitly teach: a “script” generation engine. However, this limitation is taught by Bragulla: **(“¶[0031] The inventiveness is particularly evident in that an installation script is generated automatically and above all dynamically; the new package is augmented with specific target system information, so that optimized and in particular time-optimized installation on the relevant target system is possible without further system parameters having to be requested and/or processed during the installation. The time optimization of the status change,**

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**particularly of software replacement, is therefore based according to the invention on the concept that the software to be installed does not need to be moved during the active phase.”)** In addition, it would have been obvious to one of ordinary skill in the art to combine the teachings of Bragulla with the teachings of Marino as Marino describes the advantages of using a script for installation, and Bragulla teaches a method for overcoming the limitations described in Marino (automatic script customization): Col. 1 Ln 67-Col. 2 Ln 6 “A single installation script may be used to install the program, and, for each individual computing environment the script can be edited to account for the peculiar requirements of that context. The disadvantage of this method is that it requires an administrator to spend a considerable amount of time editing each individual script to tailor it to particular configurations.”

Regarding Claims 2 and 6, Marino teaches: wherein each of said semantic models comprises a listing of component relationships **(226)**, target platform requirements **(“The current state of the user's machine is determined.”)** and platform neutral installation instructions **(232 previous to update for user's platform)**. **(Col. 14, Ln 13-31 “The current state of the user's machine is determined. If one or more components are incompatible with the components to be loaded, the offending components are removed in an orderly fashion so that components dependent on them are also removed. The procedure described for the mutually exclusive relationship can be used to implement this operation in accordance with the invention. This is followed by installation of the requested components,**

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**also in accordance with the invention, e.g., the method outlined in the flow chart in FIG. 4.”).**

Regarding Claims 3 and 7, Marino teaches: wherein said component relationships comprises at least one component relationship selected from the group consisting of a containment relationship, a usage relationship, a contradiction relationship, and an equivalence relationship. **(Col. 2, Ln 52-65 “Briefly, the invention requires that a suite, and preferably each component of the suite, includes specification of its installation-affecting relationships along with an acceptable installer, in particular if the installer is different from a default installer. Some examples of installation-affecting relationships include dependency or mutual-exclusion. In a dependency relationship a first component depends on a second component if the second component has to be present prior to the installation of the first component. In contrast, a mutual-exclusion relationship between two components requires that only one of them can be present in a computing environment, or a sub-part of a computing environment, thus requiring the removal of one, if present, to install the other.”)**

Regarding Claim 4, Marino teaches: further comprising a Web services interface to said repository configured to permit remote access to said repository. **((2) “... The invention may also be practiced in distributed computing environments where tasks are performed by remote processing devices that are linked through a communications network...” and (14) “Software may be downloaded, typically in**

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**compressed files, over networked computers, including those connected to the Internet.”)**

Regarding Claims 8 and 13 Marino teaches: retrieving a semantic model for the application component from a communicatively coupled repository of semantic models **(Col. 13, Ln 19-35 “Additional information may be received by the installation-affecting-relationship manager 220 from a Core Engine 224, e.g., a list of components 222 to be installed and the like. The installation-affecting-relationship manager 220 computes entries for an installation-relationship matrix 226 and initializes parameters 228 and in a data structure 230 as well as an Installation\_order list 232 (step 202).”);**

determining from said semantic model **(230)**, a set of dependent components required to be present in the specific target platform **(232, see below Col. 14, Ln 13-31 ) (Col. 13, Ln 19-35 “Additional information may be received by the installation-affecting-relationship manager 220 from a Core Engine 224, e.g., a list of components 222 to be installed and the like. The installation-affecting-relationship manager 220 computes entries for an installation-relationship matrix 226 and initializes parameters 228 and in a data structure 230 as well as an Installation\_order list 232 (step 202).”)**

further determining from said semantic model a set of resource requirements required to be met by the specific target platform; **(Col. 14, Ln 13-31 “The current state of the user's machine is determined.)**



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and, mapping said set of dependent components and said set of resource requirements into platform specific instructions (**Col. 14, Ln 13-31 “If one or more components are incompatible with the components to be loaded, the offending components are removed in an orderly fashion so that components dependent on them are also removed. The procedure described for the mutually exclusive relationship can be used to implement this operation in accordance with the invention. This is followed by installation of the requested components, also in accordance with the invention, e.g., the method outlined in the flow chart in FIG. 4.”**);

Marino does not explicitly teach: in a platform specific installation script. However, this limitation is taught by Bragulla: (**“¶[0031] The inventiveness is particularly evident in that an installation script is generated automatically and above all dynamically; the new package is augmented with specific target system information, so that optimized and in particular time-optimized installation on the relevant target system is possible without further system parameters having to be requested and/or processed during the installation. The time optimization of the status change, particularly of software replacement, is therefore based according to the invention on the concept that the software to be installed does not need to be moved during the active phase.”**) In addition, it would have been obvious to one of ordinary skill in the art to combine the teachings of Bragulla with the teachings of Marino as Marino describes the advantages of using a script for installation, and Bragulla teaches a method for overcoming the limitations described in Marino (automatic script customization): Col. 1 Ln 67-Col. 2 Ln 6 “A single installation script may be used to

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install the program, and, for each individual computing environment the script can be edited to account for the peculiar requirements of that context. The disadvantage of this method is that it requires an administrator to spend a considerable amount of time editing each individual script to tailor it to particular configurations.”

Regarding Claims 9 and 14, Marino teaches: yet further determining from said semantic model a set of platform neutral installation operations **(Col. 13, Ln 19-35 “Additional information may be received by the installation-affecting-relationship manager 220 from a Core Engine 224, e.g., a list of components 222 to be installed and the like. The installation-affecting-relationship manager 220 computes entries for an installation-relationship matrix 226 and initializes parameters 228 and in a data structure 230 as well as an Installation\_order list 232 (step 202).”)**; and, further mapping said set of platform neutral installation operations into said platform specific instructions. **(Col. 14, Ln 13-31 “The current state of the user's machine is determined. If one or more components are incompatible with the components to be loaded, the offending components are removed in an orderly fashion so that components dependent on them are also removed. The procedure described for the mutually exclusive relationship can be used to implement this operation in accordance with the invention. This is followed by installation of the requested components, also in accordance with the invention, e.g., the method outlined in the flow chart in FIG. 4.”)**.

Regarding Claims 10 and 15, Marino teaches: identifying a set of dependent components for the application component; and, further identifying a set of sub-

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dependent components for at least one of said dependent components. **(Col. 2, Ln 52-65 “Briefly, the invention requires that a suite, and preferably each component of the suite, includes specification of its installation-affecting relationships along with an acceptable installer, in particular if the installer is different from a default installer. Some examples of installation-affecting relationships include dependency or mutual-exclusion. In a dependency relationship a first component depends on a second component if the second component has to be present prior to the installation of the first component. In contrast, a mutual-exclusion relationship between two components requires that only one of them can be present in a computing environment, or a sub-part of a computing environment, thus requiring the removal of one, if present, to install the other.”).**

Regarding Claims 11 and 16, Marino teaches: repeating the identifying and further identifying steps for each dependent and sub-dependent component in a hierarchy of dependent components for the application component. **(Col. 2, Ln 52-65 “Briefly, the invention requires that a suite, and preferably each component of the suite, includes specification of its installation-affecting relationships along with an acceptable installer, in particular if the installer is different from a default installer. Some examples of installation-affecting relationships include dependency or mutual-exclusion. In a dependency relationship a first component depends on a second component if the second component has to be present prior to the installation of the first component. In contrast, a mutual-exclusion relationship between two components requires that only one of them can be**

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**present in a computing environment, or a sub-part of a computing environment, thus requiring the removal of one, if present, to install the other.”)**

Regarding Claims 12 and 17, Marino further teaches: computing an composite set of resource requirements for the application component and for said set of dependent components. **(Col. 13, Ln 19-35 “The installation-affecting-relationship manager 220 computes an in-degree parameter and a scope parameter for each component 222 to be installed or processed (step 204).”)\**

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. BROPHY whose telephone number is 571-270-1642. The examiner can normally be reached on Monday-Thursday 8:00AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Wei Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJB

12/17/2008

/Wei Y Zhen/  
Supervisory Patent Examiner, Art Unit 2191